

**DEPARTMENT OF ENERGY****10 CFR Part 851****[EHSS-RM-20-WSHP]****RIN 1992-AA61****Worker Safety and Health Program**

AGENCY: Office of Environment, Health, Safety and Security, U.S. Department of Energy.

ACTION: Final rule.

SUMMARY: On September 2, 2022, the U.S. Department of Energy (DOE or the Department) published a notice of proposed rulemaking (NPR) for public comment in which it proposed to amend its current worker safety and health program regulation. In this final rule, DOE is adopting the amendments proposed in the NPR without change. The amendments make corrections to the worker safety and health program regulation requirements related to beryllium and beryllium compounds for purposes of accuracy and consistency with DOE's Chronic Beryllium Disease Prevention Program regulation and clarify that DOE did not intend to adopt the 2016 American Conference of Governmental Industrial Hygienists threshold limit value for beryllium and beryllium compounds. In addition, in this final rule DOE is correcting minor typographical errors identified in the regulation.

DATES: This rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. The incorporation by reference of certain publications listed in this rule was approved by the Director of the Federal Register on January 17, 2018.

FOR FURTHER INFORMATION CONTACT: Mr. James Dillard, U.S. Department of Energy, Office of Environment, Health, Safety and Security, Mailstop EHSS-11, 1000 Independence Ave., SW, Washington, DC 20585, Telephone: 301-903-1165, or by email at: *james.dillard@hq.doe.gov*.

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I. Authority and Background

A. Authority

DOE has broad authority to regulate worker safety and health with respect to its nuclear and nonnuclear functions pursuant to the Atomic Energy Act of 1954 (AEA), 42 U.S.C. 2011 *et seq.*; the Energy Reorganization Act of 1974 (ERA), 42 U.S.C. 5801 *et seq.*; and the Department of Energy Organization Act (DOEOA), 42 U.S.C. 7101 *et seq.* Specifically, the AEA authorized and directed the Atomic Energy Commission (AEC) to protect health and promote safety during the performance of activities under the AEA. (*See* sec. 31a.(5) of the AEA, 42 U.S.C. 2051(a)(5); sec. 161b. of the AEA, 42 U.S.C. 2201(b); sec. 161i.(3) of the AEA, 42 U.S.C. 2201(i)(3); and sec. 161p. of the AEA, 42 U.S.C. 2201(p)). In addition, Congress amended the AEA in 2002 by adding section 234C, 42 U.S.C. 2282c, which, among other things, directed DOE to “promulgate regulations for industrial and construction health and safety at Department of Energy facilities that are operated by contractors covered by agreements of indemnification under section 2210(d) of” title 42 of the United States

Code. In 1974, the ERA abolished the AEC and replaced it with the Nuclear Regulatory Commission (NRC), which became responsible for the licensing of commercial nuclear activities, and the Energy Research and Development Administration (ERDA), which became responsible for the other functions of the AEC under the AEA, as well as several nonnuclear functions. The ERA authorized ERDA to use the regulatory authority under the AEA to carry out its nuclear and nonnuclear functions, including those functions that might become vested in ERDA in the future. (*See* sec. 105(a) of the ERA, 42 U.S.C. 5815(a); and sec. 107 of the ERA, 42 U.S.C. 5817). In 1977, the DOEEOA transferred the functions and authorities of ERDA to DOE. (*See* sec. 301(a) of the DOEEOA, 42 U.S.C. 7151(a); sec. 641 of the DOEEOA, 42 U.S.C. 7251; and sec. 644 of the DOEEOA, 42 U.S.C. 7254).

B. Background

In this final rule, DOE is adopting the amendments proposed in the NOPR published on September 2, 2022 (87 FR 54178) without any substantive change. The amendments make corrections to the worker safety and health program regulation requirements related to beryllium and beryllium compounds for purposes of accuracy and consistency with DOE's Chronic Beryllium Disease Prevention Program regulation and clarify that DOE did not intend to adopt the 2016 American Conference of Governmental Industrial Hygienists (ACGIH®) threshold limit value (TLV®) for beryllium and beryllium compounds. On February 9, 2006, when DOE promulgated 10 CFR part 851, *Worker Safety and Health Program* (71 FR 6858), it adopted several industry standards and guidelines to establish the baseline industrial and construction safety and health requirements for DOE workplace operations. The standards and guidelines with which DOE contractors performing work on DOE sites were required to comply included certain Occupational Safety and Health Administration (OSHA) regulations and TLVs® published by the ACGIH®. Compliance with these standards and guidelines were already required by DOE Order 440.1A, *Worker Protection Management for DOE Federal and Contractor Employees*, which established a comprehensive worker protection program that provided the basic framework necessary for contractors to ensure the safety and health of their workforce. 10 CFR 851.23(a) requires DOE

contractors to comply with 10 CFR part 850, *Chronic Beryllium Disease Prevention Program*, and certain OSHA regulations at 29 CFR parts 1910, 1915, and 1926, among others. In 2015, DOE amended 10 CFR part 851 and added §851.2(d) to clarify DOE's intent to adopt only OSHA's permissible exposure limit for beryllium found in 29 CFR 1910.1000, and that the ancillary provisions (*e.g.*, exposure assessment, personal protective clothing and equipment, medical surveillance, medical removal, training, and regulated areas or access control) of OSHA's standard do not apply to DOE and DOE contractors and their employees (80 FR 69564, November 10, 2015).

On January 9, 2017, OSHA promulgated new regulations in 29 CFR parts 1910, 1915, and 1926 for the protection of workers from the effects of beryllium and beryllium compounds in the workplace (82 FR 2470). These new provisions had the potential to conflict with or overlap DOE's beryllium safety and health requirements in 10 CFR part 850.

On December 18, 2017 (82 FR 59947), DOE issued a technical amendment to 10 CFR part 851 that replaced the existing references to safety and health standards and guidelines with the latest versions of the standards and guidelines. In the December 2017 amendment, DOE updated the safety and health standards and guidelines that were incorporated by reference in 10 CFR part 851, including the ACGIH® TLVs® in the "*Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices*" (2016). The TLVs® included those for beryllium and beryllium compounds.

On September 2, 2022, the Department published the NOPR (87 FR 54178) which proposed to make amendments to 10 CFR part 851 with respect to the requirements for beryllium and beryllium compounds that would: (1) ensure accuracy and consistency with 10 CFR part 850, *Chronic Beryllium Disease Prevention Program*; (2) clarify that in adopting certain OSHA regulations and ACGIH® TLVs® in 10 CFR part 851, DOE did not intend to adopt OSHA's ancillary beryllium safety requirements and ACGIH® values for beryllium and beryllium compounds; and (3) clarify in §851.2(d) that 10 CFR part 851 does not require compliance by DOE contractors with any OSHA requirements for beryllium or beryllium compounds except as provided in 10 CFR part 850. DOE stated in the NOPR that it believes these corrections are necessary to avoid potential conflicts

with DOE's beryllium safety and health requirements in 10 CFR part 850 and to avoid potential confusion among DOE contractors as to the requirements with which they must comply at DOE sites.

The NOPR also proposed to make minor corrections to clarify the meaning of §851.23(b) regarding contractor compliance with additional safety and health requirements that are necessary to protect workers at their covered workplace.

II. Discussion of Public Comments and Rule Provisions

The Department's NOPR invited public comments on the proposal and provided a public comment period that ended on October 3, 2022. The Department received three sets of comments, which were all in support of the proposed changes to the rule. Copies of the comments are in the docket for this rulemaking. To access the docket, which includes *Federal Register* notices, comments, and other supporting documents/materials, go to www.regulations.gov/docket/DOE-HQ-2022-0030. All documents in the docket are listed in the www.regulations.gov index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available. In the docket every submission was assigned a document identification (Document ID) number that consists of the docket number (DOE-HQ-2022-0030) followed by an additional four-digit number. For example, the Document ID number for DOE's NOPR is DOE-HQ-2022-0030-0001. When citing commenters in the docket, DOE includes the term "Document ID" followed by the last four digits of the Document ID number.

In this section, DOE discusses the comments it received, the final rule provisions, and the minor typographical errors in §§851.3, 851.7 and 851.23(a)(2) that DOE identified since publication of the NOPR and will be correcting in this final rule.

In general, the commenters (Document ID 0002, 0003, 0004) agreed with and supported the proposed amendments to the rule. They appreciated the Department's efforts to protect its workers and to provide a safe and healthful workplace.

A. Section 851.2 Exclusions

In the NOPR, DOE stated the current §851.2(d) provides that part 851 does not require compliance with any OSHA beryllium requirement except for any permissible exposure limit for

beryllium in 29 CFR 1910.1000. DOE proposed text in §851.2(d) that would modify the language by instead referring to DOE’s beryllium rule and stating that part 851 does not require compliance with any OSHA requirements for beryllium and beryllium compounds except as provided in 10 CFR part 850, *Chronic Beryllium Disease Prevention Program*. DOE noted that 10 CFR 850.22, *Permissible exposure limit*, states that the responsible employer must assure that no worker is exposed to an airborne concentration of beryllium greater than the permissible exposure limit established in 29 CFR 1910.1000, as measured in the worker’s breathing zone by personal monitoring, or a more stringent time weighted average permissible exposure limit that may be promulgated by OSHA as a health standard.

DOE did not receive any specific comments on this section, and DOE has not changed the language as proposed in the NPR. Final §851.2(d) states that this part does not require compliance with any OSHA requirements for beryllium or beryllium compounds except as provided in 10 CFR part 850, “Chronic Beryllium Disease Prevention Program.” This language ensures consistency between the language in 10 CFR parts 850 and 851 with respect to beryllium and beryllium compounds.

B. Section 851.23 Safety and Health Standards

In the NPR, DOE stated that §851.23(a) currently requires contractors to comply with safety and health standards and guidelines that are applicable to the hazards at their covered workplace, including those identified at paragraphs (a)(3), (a)(4), and (a)(7) of that section. DOE proposed to change §851.23(a) to clarify that, while DOE currently adopts OSHA’s permissible exposure limit for beryllium, it is not DOE’s intention to adopt OSHA’s remaining beryllium requirements in 29 CFR parts 1910, 1915, and 1926.

One commenter (Document ID 0003) specifically mentioned that it supported the proposed changes to §851.23(a) and encouraged DOE to work with its stakeholders regarding OSHA’s remaining beryllium requirements in 29 CFR part 1910. DOE appreciates this comment and has adopted the proposed changes to this paragraph in this final rule.

In this final rule, DOE adopts the changes to §851.23(a)(3), (4), and (7) that were proposed in the NOPR. Final §851.23(a)(3) corrects the reference to OSHA's regulations and refers instead to 29 CFR part 1910, *Occupational Safety and Health Standards*, excluding 29 CFR 1910.1096, *Ionizing Radiation*; 29 CFR 1910.1000, *Air Contaminants*, Tables Z-1 and Z-2, as they relate to beryllium and beryllium compounds; and 29 CFR 1910.1024, *Beryllium*.

Final §851.23(a)(4) refers to 29 CFR part 1915, *Occupational Safety and Health Standards for Shipyard Employment*, except for 29 CFR 1915.1024, *Beryllium*. Final §851.23(a)(7) refers to 29 CFR part 1926, *Safety and Health Regulations for Construction*, except for 29 CFR 1926.1124, *Beryllium*.

In the NOPR, DOE noted that in 2017, DOE adopted and incorporated by reference the ACGIH® *Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices*, (2016), but did not intend to adopt the ACGIH® TLV® for beryllium and beryllium compounds. DOE proposed to amend §851.23(a)(9) to exclude the ACGIH® TLV® for beryllium and beryllium compounds. In addition, DOE noted that §851.23(a)(9) only referred to two of OSHA's health standards for beryllium and beryllium compounds, 29 CFR part 1910 (general industry) and 29 CFR part 1926 (construction). DOE proposed to include in §851.23(a)(9) a reference to 29 CFR part 1915, the OSHA standard for shipyards.

One commenter (Document ID 0003) specifically mentioned that it supported DOE's clarification that it did not intend to adopt the ACGIH® TLV® for beryllium and beryllium compounds. DOE agrees with this commenter and has clarified the language in final §851.23(a)(9).

DOE adopts the language in final §851.23(a)(9) proposed in the NOPR, with minor changes in phrasing to improve clarity. As stated in the NOPR, it is DOE's intent in §851.27(b)(1) that the incorporation by reference of ACGIH®, *Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices*, (2016), excludes beryllium and beryllium compounds.

In the NOPR, DOE proposed minor editorial changes to §851.23(b) to clarify that nothing in part 851 relieves contractors from the responsibility to comply with any additional safety and health

requirement that are necessary to protect the safety and health of workers. One commenter (Document ID 0003) specifically mentioned that it supported the proposed changes to §851.23(b). DOE appreciates the commenter’s support for the proposed changes and has adopted the proposed changes to the paragraph in this final rule.

C. Minor Typographical Corrections

In addition to the changes proposed in the NOPR, DOE is correcting minor typographical errors in §§851.3, 851.7(b) and 851.23(a)(2).

DOE is revising §851.3 to correct the spelling of the word “contractor” in the definition of “Final notice of violation”.

DOE is revising §851.7(b) to correct the spelling of the word “envelope”.

DOE is revising §851.23(a)(2) to correct the reference to “Parts” and add in its place “Part” followed by specific section numbers.

D. List of Commenters

Document ID	Commenter	Affiliation
0002	Thiên Phúc Lê	---
0003	Steve Sallman	United Steelworkers
0004	Anonymous	Anonymous

III. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866, 13563, and 14094

Executive Order 12866, “Regulatory Planning and Review,” 58 FR 51735 (Oct. 4, 1993), as supplemented and reaffirmed by Executive Order 13563, “Improving Regulation and Regulatory Review,” 76 FR 3821 (Jan. 21, 2011) and amended by Executive Order 14094, “Modernizing Regulatory Review,” 88 FR 21879 (April 11, 2023), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net

benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (OIRA) has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this regulatory action is consistent with these principles.

Section 6(a) of Executive Order 12866 also requires agencies to submit “significant regulatory actions” to OIRA for review. OIRA determined that this regulatory action does not constitute a “significant regulatory action” within the scope of Executive Order 12866. Accordingly, this action is not subject to review by OIRA under that Executive Order.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires that an agency prepare a final regulatory flexibility analysis for any final rule where the agency was first required by law to publish a proposed rule for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). As required by Executive Order 13272, *Proper Consideration of Small Entities in Agency Rulemaking*, 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE made its procedures and policies available on the Office of the General Counsel’s website: www.energy.gov/gc/office-general-counsel.

This final rule updates DOE's worker safety and health program regulation and clarifies DOE's ongoing intent to exempt DOE contractors from specified OSHA regulations and the ACGIH® TLV® pertaining to beryllium and beryllium compounds. This rule applies only to activities conducted by DOE's contractors. DOE expects that any potential economic impact of this rule on small businesses will be minimal because work performed at DOE sites is under contracts with DOE or the prime contractor at the site. DOE contractors are reimbursed through their contracts for the costs of complying with worker safety and health program requirements. Therefore, they will not be adversely impacted by the requirements in this final rule. For these reasons, DOE certifies that this final rule, if promulgated, will not have a significant economic impact on a substantial number of small entities, and therefore, no regulatory flexibility analysis was prepared for this final rule.

C. Review Under the Paperwork Reduction Act of 1995

This final rule does not impose a collection of information requirement subject to review and approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

D. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act of 1969 (NEPA), DOE analyzed this final action in accordance with NEPA and DOE's NEPA implementing regulations (10 CFR part 1021). DOE determined that this rule is covered under the categorical exclusion found in DOE's NEPA regulations at paragraph A.5 of appendix A to subpart D, 10 CFR part 1021, because it is a rulemaking that interprets or amends an existing rule or regulation that does not change the environmental effect of the rule. *See* 10 CFR 1021.410. Therefore, DOE determined that this final rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA and does not require an Environmental Assessment or an Environmental Impact Statement.

E. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate

drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for the affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; (6) specifies whether administrative proceedings are to be required before parties may file suit in court and, if so, describes those proceedings and requires the exhaustion of administrative remedies; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of the standards. DOE completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

F. Review Under Executive Order 13132

Executive Order 13132, “Federalism,” 64 FR 43255 (August 10, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it will not preempt State law and will not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and

responsibilities among the various levels of government. No further action is required by Executive Order 13132.

G. Review Under Executive Order 13175

Under Executive Order 13175 (65 FR 67249, November 9, 2000) on “Consultation and Coordination with Indian Tribal Governments,” DOE may not issue a discretionary rule that has “Tribal” implications and imposes substantial direct compliance costs on Indian Tribal governments unless DOE provides funds necessary to pay the costs of the Tribal governments or consults with Tribal officials before promulgating the rule. DOE determined the final rule will not have such effects and concluded Executive Order 13175 does not apply to this final rule.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4) requires each Federal agency to assess the effects of a Federal regulatory action on State, local, and Tribal governments, and the private sector. (Pub. L. 104–4, sec. 201 *et seq.* (codified at 2 U.S.C. 1531 *et seq.*)). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)). UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed “significant Federal intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. (62 FR 12820) (This policy is also available at: www.energy.gov/gc/guidance-opinions under “Guidance & Opinions” (Rulemaking)). DOE examined this final rule according to UMRA and its statement of policy and determined the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the

private sector, of \$100 million or more in any year. Accordingly, no further assessment or analysis is required under UMRA.

I. Review Under Executive Order 12630

DOE determined, under Executive Order 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights” 53 FR 8859 (March 18, 1988), that this final regulation will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Executive Order 13211

Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the OIRA, which is part of OMB, a Statement of Energy Effects for any significant energy action. A “significant energy action” is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1)(i) is a significant regulatory action under Executive Order 12866, or any successor order; and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (2) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This final rule is not a significant regulatory action under Executive Order 12866 and DOE has concluded that this final rule will not have a significant adverse effect on the supply, distribution, or use of energy. Therefore, this final rule is not a significant energy action, and accordingly, DOE has not prepared a Statement of Energy Effects.

K. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being (5 U.S.C. 601, note). This final rule will not impact the

autonomy or integrity of the family as an institution. Accordingly, DOE concluded it is not necessary to prepare a Family Policymaking Assessment.

L. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). Pursuant to OMB Memorandum M-19-15, *Improving Implementation of the Information Quality Act* (April 24, 2019), DOE published updated guidelines which are available at:

www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf

DOE reviewed this final rule under the OMB and DOE guidelines and concluded that it is consistent with applicable policies in those guidelines.

M. Materials Incorporated by Reference

DOE is excluding beryllium and beryllium compounds from its adoption of the TLVs[®] for chemical substances and physical agents and biological exposure indices published by the ACGIH[®] titled *Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices*, (2016), the currently approved version for incorporation by reference. Copies of the ACGIH[®] TLVs[®] are available on ACGIH[®]'s website at: www.acgih.org.

N. Congressional Notification

As required by 5 U.S.C. 801(2), DOE will submit to Congress a report regarding the issuance of this final rule prior to the effective date set forth at the outset of this rulemaking. The report will state it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

IV. Approval by the Office of the Secretary of Energy

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 851

Federal buildings and facilities, Hazardous substances, Incorporation by reference, Occupational safety and health, Penalties, Reporting and recordkeeping requirements, Safety.

Signing Authority

This document of the Department of Energy was signed on December 8, 2023, by Jennifer Granholm, Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC, on December 12, 2023.

Treena V. Garrett
Federal Register Liaison Officer,
U.S. Department of Energy

For the reasons set forth in the preamble, the Department of Energy amends part 851 of chapter III of title 10 of the Code of Federal Regulations as set forth below:

PART 851—WORKER SAFETY AND HEALTH PROGRAM

1. The authority citation for part 851 continues to read as follows:

Authority: 42 U.S.C. 2201(i)(3), (p); 42 U.S.C. 2282c; 42 U.S.C. 5801 *et seq.*; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; 28 U.S.C. 2461 note.

2. Amend §851.2 by revising paragraph (d) to read as follows:

§ 851.2 Exclusions.

* * * * *

(d) This part does not require compliance with any Occupational Safety and Health Administration requirements for beryllium or beryllium compounds except as provided in 10 CFR part 850, “Chronic Beryllium Disease Prevention Program.”

* * * * *

§ 851.3 [Amended]

3. Amend §851.3 by removing the word “contactor” and adding in its place the word “contractor” in the definition for “final notice of violation.”

§ 851.7 [Amended]

4. Amend §851.7(b) by removing the word “envelop” and adding in its place the word “envelope”.

5. Amend §851.23 by revising paragraphs (a)(2), (3), (4), (7), and (9) and (b) to read as follows:

§ 851.23 Safety and health standards.

(a) * * *

(2) Title 29 CFR, part 1904, “Recording and Reporting Occupational Injuries and Illnesses”, §§ 1904.4 through 1904.11, 1904.29 through 1904.33, and 1904.46.

(3) Title 29 CFR, part 1910, “Occupational Safety and Health Standards,” excluding 29 CFR 1910.1096, “Ionizing Radiation”; 29 CFR 1910.1000, “Air Contaminants,” Tables Z-1 and Z-2, as they relate to beryllium and beryllium compounds; and 29 CFR 1910.1024, “Beryllium.”

(4) Title 29 CFR, part 1915, “Occupational Safety and Health Standards for Shipyard Employment,” except for 29 CFR 1915.1024, “Beryllium.”

* * * * *

(7) Title 29 CFR, part 1926, “Safety and Health Regulations for Construction,” except for 29 CFR 1926.1124, “Beryllium.”

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(9) American Conference of Governmental Industrial Hygienists (ACGIH®), *Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices*, (2016)

(incorporated by reference, see §851.27), excluding the threshold limit values (TLVs®) for beryllium and beryllium compounds, when the ACGIH® TLVs® are lower (more protective) than permissible exposure limits in 29 CFR part 1910 for general industry, 29 CFR part 1915 for shipyards, and/or 29 CFR part 1926 for construction. When the ACGIH® TLVs® are used as exposure limits, contractors must comply with the other provisions of any applicable expanded health standard found in 29 CFR parts 1910, 1915, and 1926.

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(b) Nothing in this part relieves contractors from the responsibility to comply with any additional safety and health requirements that are necessary to protect the safety and health of workers.

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6. Amend §851.27 by revising paragraph (a) to read as follows:

§ 851.27 Materials incorporated by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the U.S. Department of Energy (DOE) must publish a document in the *Federal Register* and the material must be available to the public. All approved incorporation by reference (IBR) material is available for inspection at DOE and at the National Archives and Records Administration (NARA). Contact DOE: the U.S. Department of Energy, Office of Environment, Health, Safety and Security, Office of Worker Safety and Health Policy, Mailstop EHSS-11, 1000 Independence Ave. SW., Washington, DC 20585; (301) 903-1165. For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email: fr.inspection@nara.gov. The material may be obtained from the sources in the following paragraphs of this section.

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